

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 8561

Investigation pursuant to 30 V.S.A. §§ 30 and 209)
regarding the Construction and Operation of a)
Metereological Tower located in Swanton, Vermont)

Order entered: 10/8/2015

PROCEDURAL ORDER RE: INTERVENTION

On September 4, 2015, I issued an Order establishing deadlines for filing motions to intervene and responses to any such motions.¹

On September 4, 2015, Christine and Dustin Lang (the "Langs") filed a motion to intervene in this proceeding (the "Lang Motion").

On September 11, 2015, the Vermont Department of Public Service ("DPS" or the "Department") filed comments on the Lang Motion (the "DPS Comments").

On September 15, 2015, the Vermont Agency of Natural Resources ("ANR") filed a motion to intervene in this proceeding (the "ANR Motion").²

On September 21, 2015, Travis Belisle (the "Respondent") filed comments in opposition to the Lang Motion (the "Respondent's Comments").

In today's Order, I deny the Lang Motion without prejudice and grant the ANR Motion.

The Lang Motion

The Langs contend that they meet the requirements for permissive intervention under PSB Rule 2.209(B). The Langs state that they have a substantial interest "in the development of the factual record in this case." The Langs assert that they have evidence necessary to the record that they would submit if they are permitted to intervene as a party. The Langs state that they possess written disclosures from the Respondent that would provide evidence relevant to the penalty criteria of 30 V.S.A. § 30(c).

1. See Docket 8561, Order of 9/4/15.

2. The ANR Motion was filed four days after the intervention deadline. ANR represents that the parties do not object to its untimely filing.

The Department and the Respondent both state that the Langs have not presented sufficient detailed facts related to their asserted interest in this proceeding. The Department does not object to the Lang Motion, but "believes it would be helpful for the Langs to supplement their filing to provide additional information to the Board and the parties."³ The Respondent requests that the Lang Motion be denied because it does not demonstrate that the Langs' interest meets the standard for permissive intervention. The Respondent also argues that "possession of potentially relevant evidence is not the equivalent of possessing a substantial and particularized interest for purposes of permissive intervention."⁴ The Respondent further notes that "relevant evidence may be offered through an existing party in the proceeding."⁵

While expressing a general concern for the adequacy of the factual record, the Langs have made no showing as to why the Department cannot adequately represent their interest. Further, the Langs did not file any response to the Department's recommendation that they provide supplementary information substantiating their proffer of relevant evidence.

"In applying the substantial interest standard under PSB Rule 2.209(B), the Board will deny a motion to intervene where a movant has failed to demonstrate a 'specific particularized interest' that may be affected by the outcome of a proceeding. Simply raising generalized concerns is not sufficient to support intervention."⁶

I therefore deny the Lang Motion for failure to articulate a substantial interest that may be affected by the outcome of this proceeding as required under 2.209(B), but do so without prejudice. I would reconsider the Langs' request to permissively intervene if the Langs: (1) provide supplementary information to substantiate their interest in participating; (2) show why the Department cannot provide any relevant evidence to ensure the adequacy of the record in this proceeding; and (3) file a second motion to intervene including this supplementary information by October 16, 2015.

3. DPS Comments at 1.

4. Respondent's Comments at 4.

5. *Id.*

6. *Investigation into alleged violation by Vermont Gas Systems, Inc.*, Docket 8328, Order of 11/6/14, at 3 (quoting *Application of Seneca Mountain Wind, LLC*, Docket 7867, Order of 10/5/12 at 2, citing *Joint Petition of Green Mountain Power Corporation, et al.*, Docket 7628, Order of 9/3/10 at 3-4).

The ANR Motion

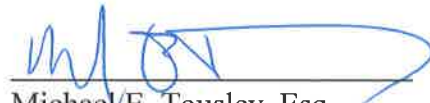
ANR represents that neither the Respondent nor the Department oppose ANR's intervention. ANR further states that it "is the relevant state entity responsible for reviewing natural resource impacts" and has a substantial interest "in the potential natural resource issues associated with the permitting, siting, and construction of meteorological towers in the state of Vermont."⁷

In the absence of any objection, I find that ANR has set forth a substantial interest that may be affected by the outcome of the proceeding that is sufficient for permissive intervention under Rule 2.209(B). ANR's participation is restricted to only those issues in which it has demonstrated an interest.

In the first scheduling Order in this Docket, I noted that "[i]f a person/entity moves to intervene and that intervention is granted, further adjustments to the schedule shall be considered."⁸ Any motion to adjust the schedule in response to this Order shall be made by October 23, 2015.

SO ORDERED.

Dated at Montpelier, Vermont, this 8th day of October, 2015.


Michael E. Tousley, Esq.
Hearing Officer

OFFICE OF THE CLERK

FILED: October 8, 2015

ATTEST: Judith C. Whitney
Deputy Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@vermont.gov)

7. ANR Motion at 1.

8. Docket 8561, Order of 9/4/15 at 2 n.2.